



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FEDERAL EXPRESS

Mr. Brian Skiles

(b) (6)

Reading, PA 19602

OCT 14 2009

Re: Show Cause and Information Request Letter re:
Possible Lead-Based Paint Disclosure Rule Violations
Various Properties - Reading, PA area

Dear Mr. Skiles:

This letter provides you with an opportunity to meet or have a telephone conference with the United States Environmental Protection Agency, Region III ("EPA" or the "Agency") to discuss possible lead disclosure violations at five of your rental properties, i.e., to "show cause" contesting such alleged violations. The procedure for initiating such a meeting/conference is explained later in this letter. The properties that EPA is investigating are located at 25 State Street, Hamburg, PA, and at the following addresses in Reading, Pennsylvania:

(b) (6)

**I. REQUEST AND OPPORTUNITY TO PROVIDE EPA
WITH ADDITIONAL INFORMATION RELATING TO
YOUR COMPLIANCE WITH THE DISCLOSURE RULE**

One purpose of this letter is to request additional and relevant information from you and to encourage you to provide EPA with any such additional information regarding your Disclosure Rule activities at the identified "target housing" residences that you believe EPA

should review and consider before concluding its instant investigation. Specifically, EPA hereby requests that you provide the following information:

1. Please provide a copy of each lease contract, use agreement or other such agreement executed between you (or any other related entity) and the tenant(s) / guest(s) of *each* of the "target housing" properties and residential dwellings identified above that was, or that currently is, in effect during the period *from January 1, 2006 through the present date*.
2. Please provide a list of any other properties owned by you and leased to others, or otherwise made available for residential use by others in exchange for payment.
3. Please provide all Lead Disclosure forms, lead testing reports, remediation reports, and any additional information, documents or statements that you consider relevant to EPA's instant Disclosure Rule compliance investigation of you.

The Disclosure Rule and its requirements are further described below.

Pursuant to the regulations set forth at 40 C.F.R. Part 2, Subpart B, if any portion of your response contains "business information" (as defined at 40 C.F.R. § 2.201), you are entitled to assert a business confidentiality claim covering any part of such "business information." Any such claim is subject to EPA's evaluation of the information's confidential status pursuant to the procedures set forth at 40 C.F.R. Part 2, Subpart B. Unless such a confidentiality claim is asserted at the time the requested "business information" is submitted, EPA may make this information available to the public without further notice to you. Information subject to a business confidentiality claim, hereinafter referred to as Confidential Business Information (or "CBI"), may be made available to the public only to the extent set forth in the above-cited regulations. Any such claim for confidentiality must conform to the requirements set forth in 40 C.F.R. § 2.203(b). If a CBI claim is made, EPA may then require you to substantiate any such claim, in writing. Any such request for substantiation will seek information, in accordance with 40 C.F.R. § 2.204(e)(4), to determine whether the information claimed as CBI actually qualifies as CBI.

II. REQUEST TO "SHOW CAUSE" AND ENGAGE IN SETTLEMENT DISCUSSIONS

Information gathered to date by EPA representatives indicates that, at the some or all of the properties listed above, you may have violated certain requirements of the Real Estate Notification and Disclosure Rule ("Disclosure Rule") set forth at 40 C.F.R. Part 745, Subpart F. The Disclosure Rule was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA").

The Disclosure Rule requires that lessors (landlords) and sellers of "target housing" must comply with the notification and disclosure requirements for lease and sale transactions as codified at 40 C.F.R. Part 745, Subpart F. The term "target housing" is defined as follows at 40 C.F.R. § 745.103:

"Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling."

Since the housing listed above is housing constructed prior to 1978 (i.e., "pre-1978 housing") and it does not meet any of the above exceptions to the Disclosure Rule, it is therefore "target housing," which must comply with the notification and disclosure requirements for lease contracts pursuant to the requirements of 40 C.F.R. Part 745, Subpart F. A copy of these regulations is enclosed herein. During EPA's investigation, EPA obtained information which indicates that you, as the lessor (landlord) of the "target housing" listed above, may not have complied with the Disclosure Rule notification and disclosure requirements applicable to these leases.

The Disclosure Rule requires that lessors do the following, either within the lease or as an attachment to the lease:

- Include a copy of an EPA-approved lead-warning statement to the lessee or purchaser;
- Disclose the presence of any known lead-based paint and/or lead-based paint hazards, or indicate no knowledge of lead-based paint and/or lead-based paint hazards; and
- Include a statement by the lessee (tenant) affirming receipt of various Lead Disclosure information including, but not limited to, receipt of an EPA-approved lead hazard pamphlet.

Based on EPA's review of the available lease transactions for the "target housing" cited above, EPA believes that you may have violated the notification and disclosure requirements of 40 C.F.R. Part 745, Subpart F. Specifically, EPA believes that, for each of the above-listed properties, you violated Disclosure Rule requirements in the following manner:

1. failing to provided an EPA-approved lead warning statement, either as an attachment to or within the lease contract, in violation of 40 C.F.R. § 745.113(b)(1);
2. failing to disclose the presence of known lead-based paint and/or lead-based paint hazards, or the lack of knowledge of any hazards, either within the lease contract or as an attachment thereto, in violation of 40 C.F.R. § 745.113(b)(2);
3. failing to list the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or, if no such records or reports are available, indicating this fact, either within the lease contract or as an attachment thereto, in violation of 40 C.F.R. § 745.113(b)(3);
4. failing to include a statement by the lessees affirming receipt of the information set out in accordance with 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the EPA-approved lead

hazard pamphlet specified in 40 C.F.R. § 745.107(a)(1), in violation of 40 C.F.R. § 745.113(b)(4); and

5. failing to include the signatures certifying to the accuracy of the statements made by the lessors and lessees in the lease concerning the Lead Disclosure, and the dates of such signatures, in violation of 40 C.F.R. § 745.113(b)(6).

Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, makes it a prohibited act, under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with the requirements of the Disclosure Rule. Section 1018 of the RLBPHRA and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty under Section 16 of TSCA in the maximum amount of \$10,000 for each violation of Section 409 of TSCA. This amount has been increased to adjust for inflation.

Any such penalties would be calculated by EPA pursuant to the *Final Enforcement Response Policy for the Real Estate Notification and Disclosure Rule* ("Final ERP"), a copy of which is enclosed with this letter. In determining the amount of any such proposed penalty, Section 16(a)(2)(B) of TSCA requires EPA to take into consideration the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

Nonetheless, the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules of Practice") authorize EPA and an alleged violator to execute a settlement agreement resolving alleged violations without proceeding to a formal administrative hearing. Under this authority, EPA may simultaneously commence and conclude a case without the filing or issuance of a Complaint. (See, 40 C.F.R. § 22.13(b)). **In such instances, the proposed penalty also may be reduced to reflect the lower transaction costs incurred by EPA in resolving such matters through the pre-filing settlement process rather than through litigation.** Such proposed penalties may also be reduced if the alleged violator agrees to implement an EPA-approved environmentally beneficial project.

Prior to making any final enforcement decision (such as the possible filing of an administrative Complaint) against you for the above-referenced alleged Disclosure Rule violations, EPA is providing you with an informal opportunity to "show cause" why EPA's present information concerning the above-identified instances of Disclosure Rule noncompliance is not correct and submit any other information that you may deem relevant to this matter. **Please contact EPA within twenty (20) days of your receipt of this letter if you are interested in meeting with EPA to discuss these alleged violations.**

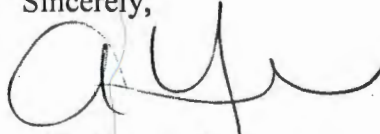
This meeting would likely be here in the Region III office in Philadelphia. In the alternative, we could have a telephone conference to discuss these allegations. In order to

schedule such a meeting, or if you have any questions regarding this letter, please contact Ms. Annie Skidmore, a Lead Compliance Officer of my staff, at 410-305-2640. **If you are represented by an attorney, he/she should contact Ms. Natalie Katz, Senior Assistant Regional Counsel, at 215-814-2615, to arrange such a meeting.** Alternatively, if you are not interested in discussing this matter, or a potential settlement and resolution thereof, please notify Ms. Skidmore or have your attorney notify Ms. Katz, within this twenty-day timeframe. If you choose not to engage in these discussions, EPA may file an administrative Complaint against you, seeking a penalty.

Please note that EPA has determined that your property rental activities may be considered a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Please see the "U.S. EPA Small Businesses Resources" enclosed with this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

Thank you for your prompt attention to this matter.

Sincerely,



Alizabeth J. Olhasso
Acting Branch Chief
Toxics Programs Branch
Land and Chemicals Division

Enclosures: 40 C.F.R. Part 745, Subpart F
Color-coded Disclosure Form
Final Enforcement Response Policy
U.S. EPA Small Business Resources Information Sheet

cc: Annie Skidmore (3LC61)
Natalie Katz (3RC30)